

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI
CIVIL NO. 09-70 - SJD - JGW**

OHIO CASUALTY INSURANCE CO.,

PLAINTIFF

vs.

**C & C TRUCKING OF DUNCAN SC,
INC., *et al.*,**

DEFENDANTS

REPORT AND RECOMMENDATION¹

This case is an interpleader action brought by plaintiff Ohio Casualty Insurance Company (“Ohio Casualty”) against defendants C&C Trucking, MGR Express, Inc., Apollo Express, ZT Enterprises, Davis Transfer Company, Sunteck Transport Group, Blackhawk Transport Inc., Five Rivers Trucking Co., LLC, JD Factors, LLC, Midwest Transport Specialist, Imperial Trans-Express, Inc., Eagle Capitol Corporation, and First Advantage Transportation Services to resolve completing claims under a surety bond (Doc. 1).

I. BACKGROUND AND PROCEDURAL HISTORY

On November 12, 2007, Ohio Casualty, as a surety, pursuant to 49 U.S.C. § 13906, executed a Property Broker’s Surety Bond (“Bond”) in the penal sum of \$10,000.00, for TJMT Transportation Service BT Logistics (“TJMT”), as principal, in favor of the United States of America for the use and benefit of any and all motor carriers or shippers to

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

whom TJMT may be legally liable for damages as described in said Bond. (Doc. 1, Ex. A).

Ohio Casualty received notice of multiple claims under its Bond by various bond claimants of TJMT, who are named defendants in this action. Ohio Casualty then filed the instant action on February 2, 2009, seeking to pay the total penal sum of the Bond into the Court's control for disbursement as the Court deems proper.² (Doc. 1).

Thereafter, on April 3, 2009, defendant Sunteck Transport Group filed its Answer wherein it asserted its claim under Ohio Casualty's bond in the amount of \$5,280.00. (See Doc. 5, Exs. A & B).

On October 13, 2009, after failing to appear in this action, the Clerk entered default as to defendants Blackhawk Transport, Inc., C & C Trucking of Duncan SC, Inc., Davis Transfer Company, Inc., Eagle Capital Corporation, First Advantage Transportation Services, Five Rivers Trucking, LLC, Imperial Trans-Express, Inc., JD Factors, LLC, MGR Express, Inc., Midwest Transport Specialist. (Doc. 17).

Additionally, defendant ZT Enterprises filed its answer, *pro se*, on February 26, 2009. (See Doc. 3). The answer was stricken, however, as a corporation cannot appear in federal court except through an attorney. *Doherty v. American Motors Corp.*, 728 F.2d 334, 340 (6th Cir. 1984). On November 25, 2009, ZT Enterprises was ordered to secure counsel and have counsel enter an appearance on the docket within thirty days. (Doc.

² On, April 2, 2010, the Magistrate Judge issued a Report and Recommendation that Ohio Casualty's motion to pay funds into the Court and for release be granted, and upon receipt of the funds Ohio Casualty be dismissed as a party to this action. (Doc. 24).

18). The order further stated that ZT Enterprises' failure to secure counsel within the allotted time could result in the entry of default against the corporation. ZT Enterprises failed to secure representation. Thereafter, on April 2, 2010, the Magistrate Judge issued a Report and Recommendation that the Clerk be directed to file an entry of default against ZT Enterprises. (Doc. 23).

On April 16, 2010, after retaining counsel, ZT Enterprises filed a motion for leave to answer out of time. (Doc. 26). The motion was granted and the Court vacated the pending Report and Recommendation that the Clerk be directed to enter default against ZT Enterprises. (Doc. 28). ZT Enterprises' answer was filed on April 20, 2010, wherein it asserted its claim under Ohio Casualty's bond in the amount of \$3,380.00. (*See* Doc. 29.)

III. ANALYSIS

All Defendants in this action have been properly served through either a Summons or Waiver of Service which have been filed with the Court. However, only Sunteck Transport Group and ZT Enterprises, Inc. have filed responsive pleadings in this action. As their claims do not exceed the bond amount of \$10,000, Sunteck Transport Group and ZT Enterprises, Inc. should each be paid the full amount of their respective claims.

IV. CONCLUSION

Accordingly, it is therefore **RECOMMENDED** that:

- (1) The Clerk disperse \$5,280.00, plus any applicable interest from the registry of the Court to Suntek Transport Group;
- (2) The Clerk disperse \$3,380.00, plus any applicable interest from the registry of the Court to ZT Enterprises, Inc; and
- (3) This case be **CLOSED**.

DATE: June 23, 2010

s/ J. Gregory Wehrman
J. Gregory Wehrman
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **14 DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **14 DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).